
SENATE BILL No. 164

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-2.

Synopsis: IURC fining authority and merchant power plants. Allows the utility regulatory commission (IURC) to impose a civil penalty of not more than \$2,000 if a public utility fails to comply with: (1) a standard of service established by IURC rule; or (2) a rate or service requirement of an IURC order. Allows the IURC to impose an additional civil penalty of not more than \$4,000 if the IURC finds that the failure to comply demonstrates, by a continuing pattern of conduct, a willful disregard by the public utility of its obligation to remedy the failure. Exempts commercial mobile service, rural electric membership corporations, and rural telephone cooperatives from the civil penalties. Specifies that a suit to recover a civil penalty imposed by the IURC shall be brought by the attorney general. Allows the attorney general to recover costs if the attorney general prevails in the action. Provides that merchant power plants are subject to the jurisdiction of the IURC. Requires the IURC to notify the local zoning authority of a petition for approval of a merchant power plant. Requires the IURC to consider any land use plan or other relevant information provided by the local zoning authority.

Effective: Upon passage; July 1, 2002.

Weatherwax

January 7, 2002, read first time and referred to Committee on Commerce and Consumer Affairs.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

SENATE BILL No. 164

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-109 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 109. **(a) This section**
3 **does not apply to either of the following:**

4 **(1) The provision of commercial mobile service (as defined in**
5 **47 U.S.C. 332).**

6 **(2) A corporation covered by IC 8-1-13 or IC 8-1-17.**

7 **(b) This section does not apply when a public utility's failure to**
8 **comply under subsection (e) is caused by any of the following:**

9 **(1) Customer provided equipment.**

10 **(2) The negligent act of a customer.**

11 **(3) An emergency situation.**

12 **(4) An unavoidable casualty.**

13 **(5) An act of God.**

14 **(6) Circumstances beyond the control of the public utility.**

15 **(c) As used in this section, "public utility" includes a public**
16 **utility owned or held in trust by a consolidated city under**
17 **IC 8-1-11.1.**



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(d) A public utility that violates this chapter, or fails to perform any duty enjoined upon it, for which a penalty is not otherwise provided, commits a Class B infraction: and every officer of a public utility shall comply with:

(1) this chapter; and

(2) every order or rule of the commission made under the authority of this chapter.

(e) Except as otherwise provided in this chapter, if the commission finds, after notice and hearing, that a public utility has failed to comply with:

(1) a standard of service established by commission rule; or

(2) a rate or service requirement of a final and unappealable order of the commission;

the commission may order the public utility to pay a civil penalty of not more than two thousand dollars (\$2,000) for each failure to comply.

(f) Notwithstanding subsection (e), if the commission finds, after notice and hearing, that the public utility's failure to comply demonstrates, by a continuing pattern of conduct, a willful disregard by the public utility of its obligation to remedy the failure found under subsection (e), the commission may impose an additional civil penalty of not more than four thousand dollars (\$4,000) for each failure to comply.

(g) The commission shall consider the following when determining the appropriateness of the imposition or amount of a civil penalty:

(1) The size of the public utility.

(2) The gravity of the failure to comply.

(3) The good faith of the public utility in attempting to remedy the failure to comply or achieve compliance after receiving notification of the failure.

(4) The effect of the civil penalty on the public utility's financial ability to provide adequate and reliable service.

(5) If the public utility is a nonprofit company:

(A) the effect of the penalty on the company's members and their capitalization of the company; and

(B) whether the act or omission causing the failure to comply had been approved or requested by the company's members.

In the order imposing the civil penalty, the commission shall make specific findings with respect to the factors described in subdivisions (1) through (5).

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(h) A public utility may not be subject to both a civil penalty under this section and a negotiated penalty under a commission approved settlement agreement for the same failure to comply. If the commission has approved a settlement agreement that includes penalties or remedies for noncompliance with specific provisions of the settlement agreement, the penalties provided in this section do not apply to those instances of noncompliance during the lifetime of the settlement agreement.

SECTION 2. IC 8-1-2-115 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 115. (a) The commission shall inquire into any neglect or violation of the statutes of this state or the ordinances of any city or town by any public utility doing business therein, or by the officers, agents, or employees thereof, or by any person operating the plant of any public utility, and shall have the power, and it shall be ~~its~~ **the commission's** duty to enforce the provisions of this chapter, as well as all other laws, relating to public utilities. Any forfeiture or penalty provided in this chapter shall be recovered and suit therein shall be brought in the name of the state of Indiana ~~in the circuit or superior court where the public utility has its principal place of business~~ **by the attorney general in a court having jurisdiction**. Complaint for the collection of any such forfeiture may be made by the commission or any member thereof, and, when so made, the action so commenced shall be prosecuted by the **attorney general**. ~~counsel~~.

(b) If the attorney general prevails in an action under this section, the attorney general may recover any of the following:

- (1) The amount of a judgment, a forfeiture, a civil penalty, or another penalty.
- (2) The attorney general's reasonable costs in maintaining the action.

SECTION 3. IC 8-1-2-128 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 128. (a) This section does not apply to any of the following:

- (1) A corporation operating under IC 8-1-13.
- (2) A nonprofit corporation most of whose members are operating under IC 8-1-13.
- (3) A joint agency created and operating under IC 8-1-2.2.

(b) As used in this section, "merchant power plant" means a facility within Indiana used for the:

- (1) production of electric energy; and
- (2) sale of electric energy exclusively on the wholesale market



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to other public utilities, energy service providers, or power marketers within or outside Indiana.

(c) A merchant power plant is subject to the jurisdiction of the commission.

(d) For any petition filed by a merchant power plant under IC 8-1-2.5 or IC 8-1-8.5, the commission may consider the following:

(1) Location of the merchant power plant.

(2) Need for the electricity to be generated or other benefits to be provided by the merchant power plant.

(3) Impact of the merchant power plant on electric, water, and natural gas suppliers and customers.

(4) Financing for the merchant power plant.

(5) Other factors the commission considers relevant.

SECTION 4. IC 8-1-2-129 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 129. (a) Not later than seven (7) days after receiving a petition for the approval of a merchant power plant, the commission shall notify, by certified mail, the appropriate county or municipal agency having zoning jurisdiction in the area where a merchant power plant is proposed.

(b) The agency having zoning jurisdiction may, not later than thirty (30) days after receiving notification from the commission under subsection (a), forward to the commission the following information concerning the proposed location and impact of the merchant power plant:

(1) Land use plans as identified in a comprehensive plan or applicable local zoning ordinances.

(2) Other issues considered relevant to local officials.

In its consideration of the petition for approval of the merchant power plant, the commission shall consider any information provided to it under this subsection.

SECTION 5. An emergency is declared for this act.

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